The Province of Alberta

IN THE MATTER OF "THE NATURAL GAS UTILITIES ACT"

—and—

IN THE MATTER OF an Enquiry into Scheme to be adopted for Gathering, Processing and Transmission of Natural Gas in Turner Valley

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G. M. BLACKSTOCK, Esq., K.C., *Chairman*

Dr. E. H. BOOMER, F.C.I.C., *Commissioner*

Session:

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W I T N E S S E S

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9.30 A.M.

MR. CHAMBERS: You will recall sir that when I opened the argument in answer to Mr. Fenerty's Application I had some discussion -

MR. FENERTY: Before my friend proceeds it occurred to me that when this argument went on this is being treated as an Application but I think in order to put the thing in the position it should be in regularly I think perhaps we should have proceeded by way of asking Mr. Mercer on cross-examination about these documents and then asked him in that cross-examination to produce these documents and Mr. Mercer refusing to do so on advice of Counsel. Perhaps we can take it on the face of it.

MR. CHAMBERS: I am not asking that the Application stand or fall on that not having been done. I would like to make my position clear when the time comes. I am going to ask that the Board should make an Order so that I know and my client and the witnesses will know just what he is to do.

MR. FENERTY: It is satisfactory to treat it as if that question had been asked on cross-examination and refused.

MR. CHAMBERS: Oh yes. In connection with the preliminary discussion we had as to the use Mr. Fenerty desired to make of this information and the purpose for which he thought it should be produced, I refer to Page 2678 of yesterday's transcript in Volume 34.

MR. BLANCHARD: The Page again Mr. Chambers.

MR. CHAMBERS: 2678, at the top of the page.

"THE CHAIRMAN: In other words, what you want to do,

MR. CHAIRMAN: I am not seeking that the Application
be granted. I merely desire to make my
position clear. I am willing to make any
reasonable and fair agreement that we can.
If it is satisfactory to them it is
satisfactory to me. Certainly desirous to make it
[illegible] as
MR. CHAIRMAN: Do you [illegible] the
discussion [illegible] I think the
application will [illegible] I think it ought
to be [illegible] we should
[illegible] as
MR. CHAIRMAN: Before we [illegible] to
[illegible] I am willing to [illegible]
[illegible] I am willing to make some
agreement in order to [illegible] Kentucky's
application -
MR. CHAIRMAN: [illegible] Line 1 [illegible]
[illegible]

[illegible]
APPLICATION OF [illegible]
NOVALITH ASPHALT
[illegible] 9:30 A.M.

Mr. Fenerty, is to get those records if you can, and compare the records with the engineering estimates and probabilities that have been submitted at this hearing.

MR. FENERTY: With a view to breaking down the evidence submitted here by Mr. Mercer. We think what they did establish is something different from his theory.

THE CHAIRMAN: And then if, Mr. Fenerty, it could be said that the apportionment that was made of those records, in those records, was merely a matter of internal arrangement in the Company and did not prove anything so far as this hearing is concerned, where would we be then ?"

Then my learned friend Mr. Fenerty comes back and says:

"MR. FENERTY: Then, of course, I would argue that those apportionments were made for those specific purposes. Those specific purposes must be assumed to be legitimate, and if they were made for those purposes without any reference to the results of a public utility inquiry, that is the best evidence of what could be done."

Now as I understand it from that my learned friend is taking the position that they were made in the operations of the Royalite Company's internal arrangement and that they did not have the public utility in mind and that is the best evidence what should be done under the public utility set up and that is the point I claim that what took place in the past does not govern the situation and has no bearing on the situation when outside parties are interested when the Board must weigh and adjust and decide what is a just and reasonable balance as between parties with diverse interests.

Now with those remarks I will go back to the Act. I

think when we rose yesterday I had just proceeded to begin to deal with Section 18 and the following Section. Section 18 says:

"18. The Board shall have exclusive power and jurisdiction to deal with all public utilities as defined by this Act and the proprietors thereof and subject to the provisions hereof."

Now there is or was a Section somewhat to the following effect in the Public Utilities Act and the definition of public utilities in the Public Utilities Act as amended in 1941 more or less overlaps with the definition in this Act and I am submitting and I have authorities to back it up if there is any difference of opinion with me that the provisions of this Act insofar as they deal with the matters that were defined as public utilities under the Public Utilities Act to all intents and purposes the Public Utilities Act have been repealed. In other words we rely upon this Act and not upon the Public Utilities Act. I do not think there is a difference.

MR. FENERTY: As far as I am concerned.

MR. CHAMBERS: Now Section 19 says:

"19. - (1) In matters within its jurisdiction the Board may order and require any person to do forthwith or within or at any specified time and in any manner prescribed by the Board, so far as it is not inconsistent with this Act or any other Act conferring jurisdiction, any act, matter or thing which such person is or may be required to do under this Act or under any other general or special Act, and may forbid the doing or continuing of any act, etc."

Then we come to sub-section 9 of 19. I do

not think the other sections -

THE CHAIRMAN: Before you leave sub-section 1 of Section 19 Mr. Chambers, do you read any limitation into the words "may order and require any person" ?

MR. CHAMBERS: No. I mean if there is evidence germaine to the matter the Board has jurisdiction. I think even if it was somebody that was not a public utility the Board could get it.

THE CHAIRMAN: That is to say when we are holding an inquiry under the Public Utilities Act any person or witness in the box may be ordered by the Board to do something ?

MR. CHAMBERS: And whether he is an employee of a public utility or not, oh yes. Then sub-section (2):

"(2) The Board shall, as to matters within its jurisdiction, have authority to hear and determine all questions of law or of fact."

As to matters within its jurisdiction. Now I will come back and revert to that later. Then sub-section (3):

"(3) The Board shall, except as herein otherwise provided, as respects the amendment of proceedings, the attendance and examination of witnesses, the production and inspection of documents, the enforcement of its orders, the payment of costs, and all other matters necessary or proper for the due exercise of its jurisdiction or otherwise for carrying any of its powers into effect, have all such powers, rights and privileges as are vested in the Supreme Court of Alberta."

Then I would refer to sub-section (9) of Section 19.

"(9) The Board or any person authorized by the Board to

make inquiry or report, may when it appears expedient,- I am referring to sub-section (c):

(c) require the production of all books, plans, specifications, drawings and documents;

(d) administer oaths, affirmations or declarations, and shall have the like powers as are vested in the Supreme Court to summon witnesses, enforce their attendance, and compel them to give evidence and produce the books, plans, specifications, drawings and documents, which it or he may require them to produce."

Section 20 is not applicable. Then I would like to turn to Section 40. The intervening Sections I do not think have any bearing. Section 40, sub-section (1):

"40. - (1) The Board may appoint or direct any person to make an inquiry and report upon any application, complaint or dispute before the Board, or upon any matter or thing over which the Board has jurisdiction."

Now just in passing I probably have said this before, but to emphasize it my contention is that the Board have no authority over the past operations of Royalite's absorption plant.

THE CHAIRMAN: That may be right. We have no authority, but when an officer of the absorption plant becomes a witness in an inquiry in a matter over which we have jurisdiction, are we forbidden to ask him to produce documents that he has in his possession ?

MR. CHAMBERS: If they deal with matters prior to the constitution of the Court. First of all let me deal with Section 40 and then I will revert back to 19. Section 40 says

that the Board may, etc., as to matters, that is facts, I submit within its jurisdiction.

MR. FENERTY: I wonder if there is some misconception. I am not suggesting in any way that I want this witness to have the Board make any orders as to what has happened at any previous time. I want that order as to what should be done with reference to the future. I am not asking for something that has been done in the past. What has been done in the past may of course be the best evidence as to what should be done in the future. I have been confronted with evidence as to past collisions in certain places and that is the best evidence as to negligence.

THE CHAIRMAN: That is in a C. P. R. case ?

MR. FENERTY: Yes, I am not attempting to have this Board make any direction as to the operation of the Royalite at any time, simply this is the best possible evidence as to the operations of Madison.

(Go to Page 2695)

MR. CHAMBERS: But as I understand my learned friend is in effect asking for an order or direction of this Board that it will use its statutory powers and order certain evidence or information to be brought here.

MR. FENERTY: Let us get it clear.

MR. CHAMBERS: If I am not right in that I would like to know.

MR. FENERTY: What I am doing at the moment is, that is one thing, what I am doing at the moment is that the Royalite Company has filed a submission, Exhibit 98, in which the Royalite Company says "It is submitted that the charge to Royalite for services performed by Madison in the gathering, compressing and transmission of natural gas for the Royalite natural gasoline plant be made on the volumes of gas arrived at under the above submitted formula at a rate per thousand cubic feet as proposed by Madison, and to be set by the Natural Gas Utilities Board." And I am suggesting on cross-examination it is a very proper function to break down that submission made b Royalite to show that on their own records and pro edure that is not the proper method. What better way could I get to do it?

MR. CHAMBERS: I submit there is nothing in that statement, and I do not intend to labour it, that involves Royalite going back of 1944.

MR. FENERTY: It may.

MR. CHAMBERS: Now my next submission is that Section 19, and any other sections of the Act that are dealing with this particular matter, are all qualified by the opening words of Section 19 itself, "In matters within its jurisdiction". My submission is that reading the Act as a whole, we must

qualify the provisions in the Act by those words, and particularly in view of subsection 2, "The Board shall as to matters within its jurisdiction have authority to hear and determine all questions of law or of fact."

Now, in just perusing the Act hurriedly, Part 2, to my mind, which consists of Sections 47 to 66, has no application at this time, and I do not think there are any particular sections in there that are applicable except Section 50, but that is applicable to public utilities. It says, "The Board, either upon its own initiative or upon a complaint in writing, shall have power by order in writing made" to fix just and reasonable rates and charges thereafter to be charged.

Then we come to Section 72, which appears as a section in Part 3 of the Act.

DR.BOOMER: Will you repeat that, Mr. Chambers?

MR. CHAMBERS: Pardon?

DR. BOOMER: What section is that?

MR. CHAMBERS: Section 72. And I am referring particularly to Section 72, subsection 4. Well, first of all to subsection 3 and it provides that notwithstanding any contract between the owner or producer of natural gas and the absorption plant operator, the Board shall fix and determine the proportion of the price to be received by the operator of such plant to be paid by him to such owner or producer for the gasoline content of such natural gas. Then subsection 4, "For the purpose of carrying out the provisions of this section, the Board in addition to any other powers conferred by this Act or any other Act, shall have the power to require and compel the attendance of the proprietor or any officer, agent or servant of the proprietor of any absorption plant and to compel

the production of documents related in any manner to the operation of any such plant, and with regard to the attendance of such persons and the production of such documents, the Board shall have all the powers, rights and privileges as are vested in the Supreme Court of Alberta.

Now, my submission is that those words, "The production of documents related in any manner to the operation of any such plant" have reference to the operations of the plant as and from the time this Act was passed and not before.

Now, I recited yesterday the Black Diamond case, the Black Diamond Oilfields Limited vs. Carpenter, 9 W.W.R., 158, and my submission is the words which I propose to read from the judgment of Chief Justice Harvey and Mr. Justice Stuart apply with equal force to Section 19 of this Act, to Section 40 and to Section 72(4), and here is what Chief Justice Harvey said in that particular case at page 160 of the Report. He quotes the following from Maxwell's Interpretation of Statutes. He says:

> "General words and phrases however wide and comprehensive in their literal sense must usually be construed as limited to the actual objects of the Act and as not altering the law beyond."

And Mr. Justice Stuart, he quotes at page 163 from Craie's Hardcastle as follows:

> "It is a rule as to the limitation of the meaning of general words used in a statute that they are to be if possible construed so as not to alter the common law."

And then in a more recent case of Hopfe v. C. P.R., in 1922, 1 W.W.R. 491, before the Alberta Appellate Division, Mr.

Justice Stuart in delivering the unanimous judgment of the Court at page 495, quotes with approval the following from the judgment of Chief Justice Cockburn in Regina v. Ipswich Union, 46 L.J. M.C. 207;

> "It is a general rule that where a statute is passed altering the law unless the language is expressly to the contrary, it is taken to apply to a state of fact coming into existence after the Act."

And that is the position that I take in connection with this application.

And I also refer the Board to the case of Place v.Rawtenstall Corporation, 1916, 86 L.J., K.B. page 90, where the Court held:

> That it is an essential principle of the consideration of all statutes interfering with common law rights and the rights of the public, that they should be strictly construed so as to prevent any undue extension of the statutory immunity.

And by the way, I omitted to state before, but in reference to the Black Diamond case, I think that case should be of particular interest, because the jurisdiction and the scope of the inquiry that a Board, I think it was a special tribunal set up, was at stake in that Black Diamond case.

THE CHAIRMAN: It was not under the Public Utilities Act?

MR. CHAMBERS: No.

THE CHAIRMAN: Was not that a case that arose out of a Royal Commission?

MR. CHAMBERS: Yes.

THE CHAIRMAN: Under The Public Inquiries Act?

MR. CHAMBERS: No, I think it arose under the Public Inquiries Act, it was not under the Public Utilities.

THE CHAIRMAN: It was not under the Public Utilities?

MR. CHAMBERS: No. A further case, the Court of Appeal in England, In re Pulborough School Board, 1894, 1 Q.B. 737, the late Justice Lopes uses these words:

> "It is a well recognized principle in the construction of statutes that they operate only on cases and facts which come into existence after the statutes were passed unless retrospective effect is clearly intended."

And the further case in England before Mr. Justice Cave as he then was, Re Raison, 1891, 60 L.J. Q.B. 206, where His Lordship said this:

> There is an old and well known saying with regard to new laws that you are not by a new law to affect for the worse the position in which a man or anyone finds himself at the time that the law is actually passed.

Now in passing let me say this, my submissiom is that the right to privacy and to keep my documents private, is a common law right that I have, whether I am a company or an individual, whether I am a person of substance or a person of no substance, and unless the law clearly takes away that right I still have it.

And then there are one or two more references on this particular point, and for the purpose of ready reference there is one found in a decision, a fairly recent decision, of Mr. Justice Macdonald of our Court, the Royal Bank of Canada v. Acadia School District, 1943, 1 W.W.R. at page 256. And at page 259 Mr. Justice Macdonald uses these words, which I

submit are apt.....

THE CHAIRMAN: Who were the Counsel in that case?

MR. CHAMBERS: I beg your pardon?

THE CHAIRMAN: Who were the Counsel in that case?

MR. CHAMBERS: Mr. Saucier and Mr. Clement.

MR. STEER: Who was the other?

MR. CHAMBERS: Mr. Clement. Mr. Justice Macdonald at 259 says this:

> "It may well be that this interpetation is in fact narrower than those responsible for its wording anticipated, but the true consideration of the language employed must be the governing consideration."

And then he quotes this:

> "A mere conjecture that Parliament entertained a purpose which, however natural, has not been embodied in the words it has used though they be literally interpreted is no sufficient reason for departing from the literal interpretation."

And he quotes Lord Chancellor Viscount Haldane in Lumsden v. Inland Revenue Commissioners, 1914, Appeal Cases, at 877.

(Go to page 2701.).

On that same phase of the matter I refer the Board to the case of Commercial Credit Corporation of Canada Limited vs. Niagara Finance Company Limited in 1940, Supreme Court of Canada Reports and I propose to read from the judgment of Mr. Justice Davis at page 427. He says this:

> "It is contended, in effect, by counsel for the respondent that the statutory provision in favour of 'subsequent purchasers or mortgagees' ought to be interpreted so as to give to it what is called a convenient and practical application. But in Rex v. Commissioners of Customs and Excise (1), Viscount Dunedin in the House of Lords referred to the 'stern warnings' that had been given in the cases."

And then he quotes Viscount Dunedin:

> "'to those who in order to read in words into a statute which are not there, or to divert words used from their ordinary and natural meaning, permitted themselves to speculate as to what the aim and attainment of the Act was likely to be.'"

In other words the position I take is this that the Board is not entitled to speculate or say in the absence of clear language that the Legislature must surely have intended that the operations of the Plaintiff and its earnings and profits and its disbursements prior to the coming into force of the Act would be relevant and should be taken into consideration in dealing with the future. In other words my submission is that the Board has to fix rates and charges for gathering, compressing and repressuring of gas for the future based only on present-day facts and not directly or indirectly on what were Royalite's revenues or

its expenses or its profits prior to 1944. The Legislature by the Statute has in effect said that as from March 20, 1944 the facilities for gathering, compressing and repressuring natural gas are devoted to the public service and henceforth the Board has jurisdiction over those matters, and that jurisdiction must, I submit, in the absence of clear and express authority to the contrary be exercised with reference to what is now taking place and not what the situation was formerly.

In that connection I would just like to refer for a moment to a statement of Mr. Justice Davis in his judgment in the Pioneer Laundry case which was a dissenting judgment along with Chief Justice Duff.

THE CHAIRMAN: Is that the Income Tax case?

MR. CHAMBERS: Yes. And the judgment of the dissenting judges of the Supreme Court was upheld and approved. Their reasons were approved by the Privy Council. The citation of the Pioneer Laundry case is 1939 Supreme Court of Canada Reports, page 1. The part I intend to read is on pages 7 and 8. The judgment as reported in the Privy Council is found in 1939 3 W.W.R. at 567. He says this:

> "Here the Minister" - he is referring to the Minister of Inland Revenue - "was to say what was ' a reasonable amount' to be allowed for depreciation and he says, in effect, nothing. The Statute expressly gives the taxpayer a right of appeal from the Minister's decision. In The Queen v. Vestry of St. Pancras, a metropolitan vestry had a discretion by a statute not merely as to granting or refusing a superannuation allowance to a retiring officer, but also, if an

"allowance were granted, as to the amount, subject to the scale of maximum allowance prescribed by the statute. Lord Esher, at p. 375 said: 'if people who have to exercise a public duty by exercising their discretion take into account matters which the Courts consider not to be proper for the guidance of their discretion, then in the eye of the law they have not exercised their discretion.'"

Now I say that there is nowhere in the Act where any authority is given to the Board to review former charges, revenues or profits. The Board must build de novo from the passing of the Act. In my view the whole of this Application must center around and must be decided upon Section 19, and I refer particularly to sub-sections 2 and 9; Section 40, sub-section 1 and Section 72, sub-section 4 and those sections must, I submit, be considered together, all of them. As I have already stated, the position I take is that the rights of a person or a corporation to keep private its books, its accounts, its operating expenses and not be compelled to publish them are common law rights and those rights of privacy have not been taken away by the statute in clear and unmistakable terms. That is all I have to say on the question of jurisdiction.

Aside from the question of jurisdiction, I submit the Order should not be made. The past history or operations of Royalite should in any case only be dealt with and considered by the Board as part of the entire history of the production and supply of natural gas. If we are going into past operations and we are going to be ordered by the Board to do that, assuming it has authority, it should have

the whole picture. My friends, counsel for the City and the Gas Company, have - and I do not think I am overstating it - endeavoured to show by questioning of witnesses as to past operations that the producers and operators and any other parties with investments in Turner Valley have operated and used Turner Valley in the past solely or primarily in the interests of the production of oil and that they are now trying to unload an undue proportion of their costs on to the citizens of Calgary. My answer to that phase is this, that the Legislature has decided that the facilities in question are dedicated to the service of the public and I say that the Royalite Company and every other party who uses or avails itself of the services of those public utilities is as much a member of the public as the humblest citizen in the City of Calgary whose monthly gas bill is the lowest that the Gas Company sends out. It is the Legislature, not the Royalite, not the producer and not other parties with investments in Turner Valley, it is the Legislature that has decided that the gathering lines are public utilities and the fact that those gathering lines go to the Absorption Plant makes them none the less public utilities to serve every person who requires their services. It is the Legislature, not the Royalite and not the producers, that has said the charges for persons served by those utilities shall be fixed on the basis of the cost of the service rendered. Not on what Royalite has made or will make running an Absorption Plant. The Gas Company in its charges to its consumers does not fix that charge on the basis of or with regard to the profit that the consumer has or will make from the gas that the Gas Company supplies to him. In my submission in asking or suggesting that a regulatory board fix a utility

company's rates or charges on the basis of the profits made or the realization received, whether future or past, by the owner of the product served that the City and the Gas Company are in effect asking this Board to fix a system or a scheme of rates for the utility which cannot be effectively controlled by this Board for the very simple reason that the Board does not have any power of control of the price obtained from this other product and if this Board should decide that they are going to fix charges to the Absorption Plant for the gas transported on the basis of what the Absorption Plant makes or on the basis of what the Absorption Plant sells its products for it is fixing a scale of rates that it cannot control and you place the utility in a position that it does not know what its revenue is.

Finally, sirs, I submit that if the past history of the operations and the profits of Royalite are relevant then its past relations with the Gas Company and the Gas Company's profits and operations are an integral part of the picture. I submit if there is any merit to my argument in this regard the fact that the Gas Company is not a public utility within the meaning of this Act makes no difference as we discussed earlier this morning. In regard to that last point I have in mind this that my friend, Mr. Steer, on Tuesday in questioning Mr. Mercer referred to a 1921 Order of the Public Utilities Board against the Gas Company which made mention of the Royalite's willingness to supply the Gas Company with Turner Valley gas in limited quantities and I note in the Order that the Gas Company was allowed in its rate base an amount of $750,000 for new development. I also have in mind that in some of the earlier hearings the Public Utility Board allowed to

the Gas Company in fixing its Calgary rates geological expenses, at least an expense of $75,000 in one year that I know of. I know that they allowed other geological expenses because the accounts attached to some of the judgments show write-offs against that kind of thing.

(Go to page 2707)

And I also have in mind that the Gas Company's books will probably show that the consumers in Calgary have contributed and paid to the Gas Company in its rates the cost of the Bow Island repressuring. That is a matter which came up yesterday out of Mr. Blanchard's examination and the point I am getting at is if we go into past history, that the Board is bound to go into the whole thing. If we are going into the history of all these matters I am submitting that we should have the Gas Company's records probably here with a view to showing that the Turner Valley oil industry, - and the emphasis on the oil is not mine, - has contributed to the gas reserves for the Gas Company and thereby relieved the citizens of Calgary of providing funds to ensure those reserves; those are things that have to be considered, that they in part at least are responsible for the gas rates being reduced from 48 cents per thousand cubic feet in 1921 to 27 cents in the year 1945. You will recall that Mr. Ralph Davis when he was in the box in response to a question I put to him mentioned that it was the ordinary practice and well recognized by Boards in the States - -

MR. HARVIE: Twenty-five cents is it not ?

MR. CHAMBERS: Twenty-five cents, that consumers now should through their rates pay for the maintenance and the supplies of gas returned. Now I say if we are going into past history some of the past history will show that the Turner Valley industry has assumed those things to a certain extent. In other words my submission is that if the Board intends to be influenced by or to consider past matters, profits, earnings, revenues, prior to 1944 that I propose and I am saying this in all seriousness, I intend to ask and press for the opportunity of sharing, of placing all those facts before the Board. Now if the Board

decides that the past is relevant then I submit that all these matters are relevant and that this hearing which has now taken up a considerable space of time will consume considerably more time so I do submit that the thing which should be seriously considered, aside from the question of jurisdiction, if the Board is going into past history to decide what are just and reasonable rates for the Company - -

MR. FENERTY: Is that an argument or a request ?

MR. CHAMBERS: I say I am making it in all seriousness and I think - -

THE CHAIRMAN: On that very point Mr. Chambers, is it not the case that we have now before us submission after submission made by your client, the Madison Gas Company, with figures taken from, and necessarily taken from, the books of the Royalite ?

MR. CHAMBERS: Other than capital costs I do not know.

THE CHAIRMAN: All right, capital costs.

MR. CHAMBERS: I think that is so.

THE CHAIRMAN: Now would I have the right, if counsel had asked for it, to say to the witness who gave that evidence, "produce the books", in order that they might verify those figures. That is going into past history, is it not ?

MR. CHAMBERS: Yes, but my recollection is that we have not put in capital costs prior to 1944. We put in reproduction costs. Now it may be that during the course of cross-examination some questions may have been asked about the past. I objected, and I think probably some people thought I was objecting too much, perhaps even the members of the Board thought that.

THE CHAIRMAN: Surely if you use actual figures taken from

Royalite books for the purposes of the Madison submission and a witness in the box swears to them, how can you avoid producing the books ?

MR. CHAMBERS: Because there is the express provision in the Act about the Boarddealing with capital costs.

THE CHAIRMAN: You were thinking of - - - - ?

MR. CHAMBERS: Section 49 (2) I think it is.

THE CHAIRMAN: Section 49, sub-section (2) you have in mind.

MR. CHAMBERS: Yes, and I think in other words the Act does make specific provisions.

THE CHAIRMAN: But if your proposition is sound, how Mr. Chambers, can you produce figures from your books and then say that I cannot compel the production of those books because of past history ?

MR. CHAMBERS: I am arguing and I am not being facetious about this, I may be driven to it some time on another matter but that Section, sub-sections (1) and (2) is intended to apply, that is the modification under sub-section (2) is intended to apply to not the initial valuation by the Board, now that the Act has just been passed, but the subsequent ones; however I am not taking that position at the moment but off-hand I do not think I have presented any statements by either Madison or Royalite that have taken into consideration the accounts prior to 1944.

THE CHAIRMAN: No, but your capital costs are there, Mr. Chambers.

MR. CHAMBERS: No, we did not put in capital costs.

THE CHAIRMAN: I remember quite distinctly detailed evidence was given.

MR. CHAMBERS: Not of the capital costs of Royalite.

THE CHAIRMAN: With respect to pipe lines from the north to the south of the field. Now that evidence was given by Mr. Stevens-Guille and he must have taken those from the Royalite books surely.

MR. CHAMBERS: I may be wrong but my recollection is that Mr. Stevens-Guille did not go into capital costs at all.

THE CHAIRMAN: No, but I am saying that statements have been made which must necessarily have come from books. Mr. Stevens-Guille does not remember the pipe lines in Turner Valley, I am quite sure, without a reference to books.

MR. STEVENS-GUILLE: I did not take any figures from any books of the Royalite.

THE CHAIRMAN: Well then let me suggest this to you, Mr. Chambers, supposing Mr. Fenerty put a petroleum engineer in the box and that petroleum engineer made a statement that "I own and I operate an absorption plant and I deal with natural gas and in my opinion, not only my opinion, but what I do in practice is to allocate or make a distribution of the costs, X cents to gas and Y cents to natural gasoline" and then you proceed to cross-examine that man and you ask him if he keeps books and he says he does, and you say "I want to see your books to see where you got the X and Y cents." And then you ask me to compel that man to produce those books.

MR. CHAMBERS: I could not, apart from Section 49, which deals with capital costs.

THE CHAIRMAN: Would I have to refuse your application ? If you ask permission to cross-examine this man on his books and ask for him to produce his books, then do you say I must refuse that application ?

MR. CHAMBERS: I do not think you could compel him. Now I will go this far and say that the Board cannot compel it but if he does not produce them it might affect the weight of his evidence.

MR. STEER: I wonder if my learned friend Mr. Chambers is overlooking what is found in Mr. Hill's report, M-6, which is in in this case, of the properties, this is on Page 5:

"Inventories of the property of the division were taken by Company employees from Company records".

Now that strikes me can only be from the Royalite Company's records.

MR. CHAMBERS: Yes, and his valuation was made in November 1945.

MR. STEER: So it is clear Mr. Hill had the Royalite books.

MR. CHAMBERS: Undoubtedly on these matters.

THE CHAIRMAN: Now what is the difference, Mr. Chambers ?

MR. CHAMBERS: Well first of all I say Section 49 specifically deals with a situation such as that and when he referred to the Royalite books he was referring to them not for the purposes of giving evidence before this Board as to value but he was referring to the Royalite books in order to ascertain what they have and what was useful and so on and he did not predicate his evidence or ask the Board to accept his valuation because Royalite books had certain figures. Our position has been throughout and our witnesses have taken the position throughout as I understand it, that costs of capital assets were not to influence the Board's judgment in this case at all. We are not asking that the Board fix reasonable rates for the Company based on the costs.

THE CHAIRMAN: No, and we do not propose to do that, Mr. Chambers.

MR. CHAMBERS: No, but I say if I was doing that then the argument or the proposition which is put to me now would be important but I have not done that.

THE CHAIRMAN: But what Counsel is now asking is that every scrap of available evidence be put before us in order that we may arrive at a reasonable judgment, not that we use or not that we impose upon the Royalite that which they did voluntarily themselves before the Act was passed but merely for the purpose of comparing the actual operations with the theoretical statement now made.

MR. CHAMBERS: What is the purpose of comparing what took place in the past. It is what should be done in the future, but that is the purpose which Mr. Fenerty seeks to make about this, that the Board should decide from the past what are just and reasonable rates. Now if they are going to test it by what took place in the past they must of necessity decide or come to some conclusion that what took place in the past was just and reasonable, whether it was or not, and the minute the Board does that it is passing upon what took place in the past, on facts that took place in the past.

There is one other point and again I hope that the Board and Counsel involved will believe me when I say I am not stressing this argument that the Application should be decided on this particular ground, if the 1943 costs are to be produced and gone into it must involve, - whether my learned friend wants to do it or not, - accounts being gone into for years back because the war years' situation is altogether different from what, so I am informed, different from what the

ordinary proposition is going to be and we will have to go back to costs prior to the war. Now my friend intimated to me that one of the reasons he did not want to go into past years was because it would involve a lot of work but I am sincere when I say that, if we go into that matter we have to take the whole picture.

That is all I have to say.

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THE CHAIRMAN: There is another point Mr. Chambers that has occurred to me and I would like to hear you on it. There is a section which gives us the right to determine the apportionment between the producer at the absorption plant of the natural gasoline content and that is one of the issues that we are going to hear. Now we are going or we are being invited to alter an existing contract. The apportionment at the moment is X Y and perhaps we are going to be invited to say that the apportionment shall be X minus 1 as to Y plus 1. How can we determine in the first instance whether the contract is just or unjust without going into this very question we are dealing with now and that is the apportionment of the transportion of that gas from the separator to the absorption plant and where do we get that evidence. We get it from the Royalite books.

MR. CHAMBERS: We assume that the split should be made for the future on the basis of the profits, the net profits of the absorption plant. Now I say whether the absorption plant made 100% profit in the past has not a thing to do with what is fair in 1944 and my same argument applies from 1944. This absorption plant has been operating separately now and when the Board gets the set up about the rates that the absorption plant has to pay for the transportation of gas it will have the revenue and the disbursement and the profit of the absorption plant from 1944 on - a year and a half of it now or more - and that will all be available and I say the Board has no right or power to predicate this on or influence them by what took place in the past and sub-section (4) of Section 72 makes it very clear to my mind to compel the production of documents related in any manner to the operation of any such plant. Now I submit it cannot be read into that

section the past operations of the plant prior to 1944 in view of the authorities I quoted if they mean anything.

THE CHAIRMAN: One other point Mr. Chambers and then I shall trouble you no more. Supposing Royalite had not incorporated the Madison Company. Supposing it had set up a very distinct and very well severed gas division under its own management, own accountant and own office force. The only thing being the management of the Madison Conpany is not limited to a knock on the door. Do you say all we could do is to look at Royalite books from the date of the incorporation of the Madison ?

MR. CHAMBERS: Yes that is my position exactly.

THE CHAIRMAN: With respect to any matter whatsoever contained in the books ?

MR. CHAMBERS: Yes, other than what is meant in Section 49.

THE CHAIRMAN: With regard to depreciation ?

MR. CHAMBERS: Yes.

THE CHAIRMAN: And what is the limits upon the Supreme Court in a matter such as we are discussing. Is there any right of a Judge to tell a witness what he must do.

MR. CHAMBERS: Well in answer to that I will say this - that the Supreme Court has all the powers apart from Statute and from time immemorial they have had that power unless it is taken away. This Board is in exactly the opposite position. It has the power that is given to it by a Statute and when you talk about the powers of the Supreme Court that is all qualified as I said before by the matters within its jurisdiction.

THE CHAIRMAN: I think this inquiry is within our jurisdiction.

MR. CHAMBERS: I beg your pardon.

THE CHAIRMAN: I think this inquiry we are conducting is within our jurisdiction.

MR. CHAMBERS: I do not think there is much doubt about that.

THE CHAIRMAN: And in this inquiry within our jurisdiction we have all the rights and privileges such as are vested in the Supreme Court.

MR. CHAMBERS: Yes but you have the other sections dealing specifically with the production of documents and inspection and so on. I say that you must read those general provisions with the specific provisions that have been made.

THE CHAIRMAN: Thank you very much Mr. Chambers.

MR. FENERTY: If the Board pleases, I would like to make a few observations in reply and Mr. Steer has also some remarks to make. We say that we have no quarrel of any kind with the authorities establishing general principles such as quoted by my learned friend and we say that the Legislature in making this Act has provided for all those things specifically, everything we have contemplated. I am glad to note that my friend apparently takes the position that the Royalite is in the same position as if the Madison Company had not been created. I gathered that is his position because I intend to say that by the severing of these utilities the Royalite can get no advantage so far as this motion is concerned because here again the Act has intervened to provide for former owners and I will come to that in a moment. Sooner or later this Board as I anticipate is going to determine the proper method of allocating gathering costs and the result of that method and in the course of that I anticipate the Board will or may have to determine

whether the volumetric method or cost realization method is the proper one. I agree now with my friend whether it is as a subsequent motion under Section 19 or an incidence of cross-examination, relevancy is the test. There is no dispute as to that relevancy is the test. Sooner or later that is going to be determined.

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MR. CHAMBERS: Pardon me, I go further. I say the section says it is not relevant. The Legislature in its wisdom or otherwise says you cannot do it.

THE CHAIRMAN: You say there may be relevancy but there may be limitations to the statute which prevent that relevancy being held?

MR. CHAMBERS: Yes, that is why I quoted those cases.

MR. FENERTY: Does my friend say if a thing is relevant I cannot get it in cross-examination? If he says that I will stop my argument now because that is a new principle so far as cross-examination is concerned.

But going on, the Board will remember Mr. Latham set up an affirmative case before this Board that he proved division of costs was upon sales realization. Does my friend say that all these records are not relevant now from sales realization - that is an affirmative case set up? It is certainly relevant to that. As to Section 49 which the Chairman of the Board has referred to, that I say determines relevancy as to the matter of reasonable allowance for depreciation, may take into account depreciation by the owner, that is Madison, or by any antecedent owner, that is Royalite, and are the books of Royalite not relevant to show the antecedent profit taken. Are the books not relevant to that?

THE CHAIRMAN: But Mr. Chambers' reply is that you can only take Royalite's books as to depreciation and then you stop.

MR. FENERTY: He agrees that I can get them as to depreciation.

MR. CHAMBERS: Oh yes, you have them already. We are talking about depreciation of the utilities that have been

taken over. I say that section does not apply to the absorption plant.

MR. FENERTY: Now we will come to the absorption plant. Section 72(4). My friend pointed out that the absorption plant operation is not in itself a subject matter in inquiry. I mean to determine prices paid for anything. Section 72(4) says for the purpose of carrying out the provisions of this section - that is as to a just and reasonable price to be paid for natural gas - which has been gathered and delivered to an absorption plant. That is one thing. The Board shall have power to require and compel the attendance of the proprietor or any officer, agent or servant of the proprietor of any absorp ion plant. If so, the absorption plant operations are an integral part of this gathering of this gas, and may necessarily have to be inquired into to determine the apportionment of costs which go to make up a just and reasonable price. Section 72(4) is a legislative recognition of the relevancy of this inquiry we went to make, and it is apparently relevant as soon as you have to determine what proportion whether it is on a sales realization basis or on a volumetric basis. Now the sales realization will be obtained from the books. The result of the apportionment being made will be determined from the books, whether on a sales realization or volumetric or a third method which may or may not be wholly in the books. Now as I say as to those methods and the operations of the absorption plant being an integral part of the natural gas which has been gathered and delivered to the absorption plant that will dispose of it if nothing more.

Now then, incidentally with reference to the statement I made to the Board which my friend quoted.

I would like to repeat it. I do not just follow his argument in suggesting that statement discloses that I am out of Court. The effect of what I said there is, is that where a certain system has been adopted as the most scientific system available with no ulterior motive so far as inquiry under the Public Utility Act is concerned is of far greater weight before this Board as far as an Inquiry in the Public Utility is concerned the best evidence you can get when you get the results you do in this there is no reason for adopting anything other than the most scientific system. That is the best evidence you can get.

Now then, with reference to this being an incidence of cross-examination. I agree with my learned friend that if this Board has no power to allow cross-examination under the Act, then my argument on that basis fails. He must go so far, I submit, to say that there can be no cross-examination. He has participated in cross-examination for some months and I do not think he is going to make that argument under section 19. The power of cross- examination is inherent in the whole thing. For instance, this provision that a witness is not excused from answering because it may incriminate him. I do not say it is implied. It is inherent and does not say that there can be no cross-examination. Assuming for a moment there is a right of cross-examination on that point alone I say the submissions that we want the documents produced are relevant, first to test the case set up by the witness, as found in this report Exhibit 98, and secondly, once you have a witness on the stand you set up an affirmetive case of your own.

THE CHAIRMAN: The right to cross-examine, Mr. Fenerty, I think arose out of what the Court have called the principles

of natural justice, which the Board must observe.

MR. FENERTY: I think that is the real basis.

THE CHAIRMAN: And the hearing shall be conducted in public in the presence of all parties with the right of cross-examination.

MR. FENERTY: I think perhaps you put your finger on it, the principles of natural justice. That is the whole thing.

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MR. STEER: My learned friend, Mr. Chambers, has said that he is not taking any technical position and that is exactly what I would expect. Now, the technical position in this case, as I see it, would be this, Mr. Mercer is in the box and he has been served with a notice to produce certain books and documents of the Royalite Company for certain purposes, so that Counsel, with the assistance of accountants, may put to him certain questions with respect to those books and documents. Now, it is true, as my learned friend says, that the questions that are to be put to him are to be relevant to issues that have been raised in the matters that are before this Board. The main matter that is before this Board, as the Chairman has said is clearly within its jurisdiction, is the fixing of a just and reasonable price, and for the purpose of enabling the Board to fix a just and reasonable price the Madison Company has put before the Board evidence of two kinds. First, they give an estimate of what their operating and maintenance costs on the capital assets taken over by them from the Royalite Company are expected to be; and, secondly, they put before the Board evidence as to what is the proper division of common costs of facilities which are jointly used by the Roy alite Company and by the Madison Company. On both of those categories of testimony, in my respectful submission, we have got a right to cross-examine for the purpose of ascertaining the accuracy of the estimate in one case, and the scientific nature or otherwise of the allocation of common costs in the other.

The evidence is that prior to the 1st of January, 1944, the Royalite Company in one common set of books, did both these things. It produced gasoline

and it produced and sold natural gas to the market. And in those books is found the evidence as to the number of people employed, the nature of their work, and the cost of their work. And it is said also in evidence that statements of the second character are to be found, namely, those that have to do with the division or allocation of common costs. All we are asking to do by making the application that Mr. Mercer be compelled to produce those books here, all that we are asking or seeking to do, is to have an opportunity of testing the estimate against the actual facts of those experiences, and to ask the witnesses who are produced here if there are differences, how are those differences accounted for, and to ask those witnesses if there has been for any purpose prior to this time an allocation of costs, what that purpose was and why there is any difference between the allocation of costs for that purpose and the proposed allocation of costs for the purposes that are before the Board.

I submit it is quite clear from the evidence that Mr. Hill, at least, had access to these books for the purpose of determining the historical costs of the capital items, and in my respectful submission it will be a matter of some importance for the Board eventually to have that evidence before it, and there is only one way in which it can be got and that is by the production of these books.

MR. CHAMBERS: Mr. Steer, if you will pardon me for interjecting, I may have misunderstood the application, but as I understand it, they are not asking in this application for the books on capital costs, it is the operating.

THE CHAIRMAn: No, but he is just illustrating the point. Mr. Hill made the examinstion in 1943, that is my

recollection.

MR. STEER: And the reason, I may say at once, the reason why this application was not expanded to include historical costs, is that I have been informed that the Commission accountant has made that examination and will put the evidence before the Board.

MR. FENERTY: Yes.

THE CHAIRMAN: Mr. Blanchard, do you wish to participate in this argument?

MR. BLANCHARD: I have only one remark to make, Sir, and that is this, at some stage of the proceedings, as you, Mr. Chairman, remarked, there has to be an inquiry into such factors as may affect the price to be paid for the share of the absorption gasoline to be received by the producer. Now it seems to me that the only way in which the Board can possibly find an answer to that question is by applying public utility principles in an inquiry into the absorption gasoline business, which involves a question of their costs. It is important and in fact I think it is inescapable in making that inquiry for this Board to find out how much of the costs of gathering are to be borne by the absorption plant.

THE CHAIRMAN: Mr. Chambers, of course, replies to that, Mr. Blanchard. He says in effect "Madison has been operating since January of 1944, and you can find all the Madison records without going back to the Royalite at all."

MR.BLANCHARD: Yes, I understand that. Suppose this Board, suppose Mr.Chambers, when it came to that particular branch of this inquiry, were to say "We want evidence adduced, we want to adduce evidence before this Board to show that the absorption gasoline business has lost money

for the last 10 years" would the Board say that was not cogent evidence? Would Mr. Chambers be met by the argument that he cannot go back of 1944? It cuts both ways, it seems to me. It depends on its relevancy.

THE CHAIRMAN: Mr. McDonald?

MR. McDONALD: No, I have nothing to add, Mr. Chairman.

THE CHAIRMAN: Mr. Harvie?

MR.HARVIE: I have nothing to say, Mr. Chairman, in connection with the general application. But arising from a remark made by you in connection with the position of the absorption plant, I would just suggest that Section 72, 3 and 4 should be referred to, and in Section 3, the only thing that the Board is required to do there is set the percentage of the price received by the operator, the plant operator and the producer.

Now I gather that our problem that we have to meet at the moment, that you have to meet, is the cost of gathering gas and collecting so far as the absorption plant is concerned. Within the confines of the absorption plant you have no jurisdiction, it is expressly excluded under the provisions of this Act. The same thing applies with the maintenance, I cannot for the life of me see any reason to go into that. They are entitled to the service of having their product delivered to them and under this Act taken from them. They should be charged a figure for the benefits they get in that carrying service. Now, whether there is a loss or a profit in the absorption plant operations, day by day or year by year, or over a period of time, I think in the first instance should not in any way affect the cost of the gathering

service any more than I would gather you are not contemplating charging the transportation costs by the cost of scrubbing or the costs of other services.

Now if there is a loss in the absorption plant, the absorption plant will say "We will close down unless we are subsidized". If there is a profit then that profit under this Act is purely a matter for the absorption plant, and that profit is then adjusted between the producer and the operator, and has nothing to do with the transportation charge.

THE CHAIRMAN: Well, would not you require to make that adjudication, Mr. Harvie, on some reasonably scientific ground, and not on any arbitrary basis?

MR. HARVIE: I think so, but I do not think this Board has the experience in view of the method of the operation of these plants. That is purely arbitrary, it is not factual.

THE CHAIRMAN: And supposing I agree with you, it does not matter whether there is a profit or a loss, is not the real question one not of profit or loss at the absorption plant, but as to the utility of the product in the other departments of your plant's operations.

MR. HARVIE: I think not on this factor of the price of gathering gas and transporting it.

THE CHAIRMAN: Except to the extent that it is a factor in the determination of the absorption plant.

MR. HARVIE: But the utility company or the City of Calgary or the Gas Company as such are not interested in that at all. That is purely a side line. It is only a matter of giving such relief as between the producer and the operator.

THE CHAIRMAN: That is true. They cannot participate in the hearing, but they can come up here and sit and listen.

MR. HARVIE: Yes, but whatever the results of the hearing are, they will not get a benefit or suffer, so that I do not think it is a pertinent factor in this part of the hearing at all.

MR. CHAMBERS: Just alluding briefly to one or two observations made by Counsel. It seems to me the position of the Board is this, in regard to this particular matter of the rate or the amount to be charged to the absorption plant with respect to the gathering of gas, that it is in the position as though it had an application by Royalite, the operator of the absorption plant, to the Board to fix a rate for the service that is being rendered to it by the public utility facilities, that it comes in in effect as a member of the public. Now, I submit that it boils down to this, the public utility principle as it is known requires that the rates for the utility company be affected by or based on the income, net or otherwise, of the person asking for the service. Now, if that is to be the test, I submit that my learned friend, Mr. Fenerty's argument must lead the same way that the price to be charged by the Madison Company to the Canadian Western Natural Gas, Light, Heat & Power Company Limited must be fixed with regard to the same principles.

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That matter has been before the Board and has not yet been disposed of but I submit that there is an inter-relation of these applications. Is the fair charge to be made by the Madison Company to the Canadian Western Natural Gas, Light, Heat and Power Company Limited for this public utility service dependent on not only the profits to be made from the Gas Company in the future but by what they have been in past years. My learned friend's application, I submit, involves leading up to this position. If the matter of past experience is relevant as a test I say that that must involve, if the test is to be worth anything, the Board exercising its judgment of what took place in the past as to whether it is sound or otherwise. I submit that this Act does not give the Board power to do that.

That takes me to the next point and the last. My friend Mr. Fenerty takes the position that there is some magic power in the Board because this matter came up in cross-examination. Certainly the Board has power to compel witnesses to submit to cross-examination but as I said yesterday in opening my argument my submission still is the witness in the box can be asked in cross-examination and he must answer, subject to any other inherent objection, as to information within his knowledge and control. But when in the course of cross-examination by reason of counsel not getting all the information he wants or by reason of the witness not having the information he asks the tribunal to make an Order to produce certain documents. Now the Order in effect is not against the witness, it is against the man or the Company that has those documents and even in the Supreme Court or any other tribunal there are special provisions made for the ordering of documents being brought

before the tribunal. In other words it gets back to this, whether it arose in cross-examination or how it arises,is there specific power conferred on this Board under this Act to order a witness or some other party or whoever happens to have them to produce his property and bring it into Court for the inspection of the public? In other words I submit that the fact that the Act by a general section confers the right to permit cross-examination does not carry with it any special power of production of documents. What my learned friend mentioned about sub-section 6 of Section 19 about the immunity sections of witnesses, that just illustrates my point that I made before, I think in answer to the Chairman, that the general provision for the Supreme Court, the Legislature never intended that that would give to this Board the sweeping powers of the Supreme Court. It was a mode of enforcing its powers in line with the Supreme Court but the fact that they put this section 19 (6) about the immunity and the fact that they put in the section about the production of documents and how to get them all lead to the conclusion under the Act that that general provision about reference to the Supreme Court does not create unlimited powers.

THE CHAIRMAN: We do not propose to give any decision today. You, Mr. McDonald, will still be waiting for the decision on your application.

MR. McDONALD: Yes, I was going to mention that. That delays me considerably in arriving at the formation of a submission on certain aspects of the matter of price, the well-head pricd.

THE CHAIRMAN: Well I will get it out as quickly as I can, Mr. McDonald. The whole difficulty, as you

possibly know, is that being merely human I can only do a certain amount in a certain amount of time and I have not had the time to do it. However, I will not delay you very much longer I will promise you that. I think we are all entitled to a little relaxation of 10 minutes or so.
(At this stage there was a short adjournment.)

THE CHAIRMAN: Mr. Fenerty, are you satisfied that you have set out in the record clearly all of the things that you are asking should be produced?

MR. FENERTY: Well I think our view was that the other material and the conclusions from it would necessarily be brought out in Mr. Hamilton's evidence. Is that not right?

MR. STEER: Yes.

MR. FENERTY: Not everything that we hoped for or wanted for the complete case but we did think that the other part would be brought out as the result of Mr. Hamilton's examination. Now we may be wrong.

THE CHAIRMAN: Quite frankly, Dr. Boomer and I are a little concerned about one feature of the application. That is supposing we decided that Mr. Mercer should be subjected to cross-examination on the books of Royalite.

MR. FENERTY: Yes.

THE CHAIRMAN: Then most naturally that cross-examination would require to be restricted to the issue that we are trying and we feel that if we make an Order that that should not provide the ground for what I may call a fishing expedition.

MR. FENERTY: Yes. Of course, the application was enlarged I think beyond the actual point of the division of gathering costs. I hope that we went into sufficient to

take it that way.

MR. STEER: May I interrupt for a moment, sir? My view is that these books ought to be produced and when it is understood that counsel cross-examined Mr. Mercer with a view to getting the information that it would be probably agreed by counsel once they accept the Board's Order - I mean once the Board's Order is final - and if that Order is that these books are to be produced the information that we want is contained in Mr. Hamilton's analysis. Now Mr. Hamilton's analysis as I understand it consists of certain facts that are beyond dispute and then his own allocation of overhead costs, that is a matter of evidence that he can give. I would think that once it is agreed that the books are to be produced then instead of taking all the time that is necessary to brief counsel to get them in a position to cross-examine all those books that Mr. Hamilton's report would be accepted.

MR. FENERTY: I would suggest further that even if this application does not fully cover the situation that is disclosed by the books and that the books we have asked be produced do not cover that situation in full, every situation we are enquiring into or the matter that the Board has before them and assuming for the moment that there is a final Order by the Board that these books be produced then I think it would necessarily follow that any other books relevant to the points within the scope of the Inquiry would be produced without further argument or further application. If not, a further application could be made once we determine the principles. Perhaps that would meet it.

THE CHAIRMAN: Well what we want to avoid and

I think we should avoid is permitting the production of books, if we so order, to be used for the purposes of a fishing expedition.

MR. FENERTY: Yes.

THE CHAIRMAN: All right. Now what is the next item?

MR. HARVIE: Mr. Chairman we have got an hour and a half left this week and as I had understood Mr. Stevens-Guille was to be put back on the stand for the balance of the day, but I have no doubt he would hardly more than get started. Then beginning next week there will be an interjection of other witnesses and I wonder if the next hour or hour and a half or some part of it could not be very usefully employed by a meeting of counsel and your Board just to see what the agenda is for the next two or three weeks and make arrangements so that we can have as much notice as possible of the dates witnesses are to be present and what subjects should be taken up and the order.

THE CHAIRMAN: Actually what I had in mind, Mr. Harvie, is if Mr. Steer was ready to cross-examine Mr. Stevens-Guille on those items which he deferred, he would do so, leaving the cross-examination on the other fresh issues left over.

MR. STEER: Well I have been talking to my friend, Mr. Chambers, and he tells me Mr. Stevens-Guille is preparing a statement with regard to the purification plant, following conversations that were had between the Royalite officials and Mr. Martin, our expert witness. That will not be ready and from my point of view I would just as soon cross-examine Mr. Stevens-Guille once and be done with it.

THE CHAIRMAN: Except there were two different branches of the Inquiry, Mr. Steer, upon which he has not been cross-examined by anyone.

MR. CHAMBERS: No. I thought everything had been cleared up except what Mr. Steer had.

THE CHAIRMAN: Oh no. When we adjourned in May, I think it was, he went in the witness box for the purpose of cross-examination being continued. That is Volume 21 I think.

MR. CHAMBERS: That may be. I have not any distinct recollection but let me say this . . . . .

MR. FENERTY: This has been adjourned from different times. We were going to have it up from time to time but it has just been adjourned.

MR. CHAMBERS: This statement is in the course of preparation and the fact it is prepared and a certain statement I propose to make might shorten the cross-examination considerably. I have certain examination -in-chief of Mr. Stevens-Guille and I could not finish it this morning because this statement is not ready. While I am not urging that this be done, I think it would be convenient and time might be saved if we take up Mr. Harvie's suggestion because we have a long road to go yet.

MR. STEER: There is another matter arises out of Mr. Harvie's suggestion and that is this. I am told that there is an expert economist to be called and it would seem to me that counsel ought to have some sort of a resume of what he proposes to say, for their cross-examination.

THE CHAIRMAN: That is already arranged for, Mr. Steer, but it is not yet ready. I asked him yesterday to have at least 10 copies made for distribution to counsel

prior to the date on which he will give his evidence.

MR. CHAMBERS: Is there any particular time you intend calling him.

THE CHAIRMAN: We had in mind the 17th of September.

MR. HARVIE: There is just this one point on that. I would like to have his evidence submitted at as early a date as possible. It is just possible it breaks the continuity of our witnesses' evidence as anticipated but what may be more important than that is that perhaps fortunately we have not got too many economists recognized as such in the West and we will possibly wish to be briefed by counsel from the East, which will take longer than from now to the 17th.

THE CHAIRMAN: One difficulty is if we delay too long we will not have him at all.

MR. HARVIE: I certainly do not want to delay too long but on the other hand there is that very important feature of this Inquiry and we have no indication at all of the type of evidence he is going to give.

THE CHAIRMAN: Professor Stewart is not only engaged in teaching at the University but he has other activities as well that keep him very fully employed.

MR. HARVIE: I realize that and it is just unfortunate that we have not had longer notice.

THE CHAIRMAN: Well we will see what we can do and give as much possible time as we can, Mr. Harvie.

MR. HARVIE: Aside from that, Mr. Chairman, I still think it would be a great convenience, certainly to our company, in connection with its witnesses and I think may be all if we had that round table conference and set

the agenda for the future.

THE CHAIRMAN: I think the position is that we cannot help ourselves very much. We have to adjourn. Nothing is apparently ready.

MR. CHAMBERS: I have some questions I could ask Mr. Stevens-Guille.

MR. FENERTY: The situation might develop in completing that cross-examination of April that we might not, and I think we could not, but we might not finish that this morning. It would be too bad to have two or three more piece-meal parts of it.

THE CHAIRMAN: On the 18th of April Mr. Stevens-Guille was examined by Mr. Chambers and cross-examined by Mr. Fenerty and Mr. McDonald. There were left, Mr. Steer, Mr. Blanchard and Mr. Harvie.

MR. FENERTY: In connection with that counsel all had a meeting about the procedure and at that time I intimated to counsel as a result of my appreciation of some of the evidence that was transcribed that I would ask for permission to continue some further cross-examination. It was indicated then it might be of some substantial length. We drew up an agenda of how we would handle it and we felt then it would take a day. It may not.

THE CHAIRMAN: In other words you support Mr. Harvie's idea that we adjourn.

MR. FENERTY: No, I do not mind. At that time we agreed I would go on. I have that here and I am quite willing that I should go on but I do not think we will finish it today and it means refreshing one's memory again at some indeterminate time in the future.

MR. CHAMBERS: As I understand Mr. Teis is going on on Monday and we are all agreed we could not finish with Mr. Stevens-Guille today.

MR. FENERTY: Oh yes. So you do not want to start it and keep that over until perhaps a month from now.

THE CHAIRMAN: All right, we will adjourn until Monday, the 10th of September, at 9.30 A.M.

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